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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN YANEZ,

Defendant and Appellant.

H027998

(Monterey County

Super. Ct. No. SS010851A)

Martin Yanez pled guilty to one felony count of possession of a controlled substance (Health & Saf. Code, § 11350) (count one), one misdemeanor count of false representation of identity to peace officer (Pen. Code, § 148.9, subd. (a))<sup>1</sup> (count 2), and one misdemeanor count of driving when license suspended with prior convictions (Veh. Code, § 14601.1, subd. (a)) (count four) pursuant to a plea agreement of no state prison. As to count one, the court imposed the upper term of three years but suspended execution of sentence and granted probation. The court ordered defendant to pay a restitution fine of \$200 pursuant to Penal Code section 1202.4, subdivision (b).

On August 31, 2004, following a second violation of probation, the court ordered probation revoked and terminated. The court imposed the upper term of three years on

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

count one. The court then imposed a restitution fine of \$600 and stayed the parole revocation fine on the ground that defendant was to be deported. However, the abstract of judgment reflects a restitution fine of \$600 per section 1202.4 and a parole revocation restitution fine of \$600, suspended unless parole is revoked.

Defendant appeals from the judgment of conviction, asserting the \$600 restitution fines imposed pursuant to section 1202.4 and 1202.45 are unauthorized. The People concede that the second restitution fine imposed pursuant to section 1202.4 was improper and must be stricken (*People v. Chambers* (1998) 65 Cal.App.4th 819, 821-823). They agree that the abstract of judgment must be corrected to reflect the \$200 restitution fine originally imposed (§ 1202.4, subd. (b)) and an equivalent parole revocation restitution fine, which is suspended unless defendant's parole is revoked (§ 1202.45).

The \$600 restitution fine imposed on August 31, 2004 is stricken and the judgment is modified to impose a \$200 restitution fine (§ 1202.4, subd. (b)) and a \$200 parole revocation restitution fine, which is suspended unless parole is revoked (§ 1202.45). As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect the modifications.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.